

# ADDRESSING GAPS IN MALAYSIAN ENVIRONMENTAL LEGISLATION

BY

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# The Environmental Problem

- We need to understand the problem before discussing the laws, for laws are there to solve the problem.
- For well understood reasons, we can be forgiven if what we do is considered human-centric but occasionally we need to look up and acknowledge other species upon whom we depend for our survival.

# Malaysian Environmental Problems At A Glance.

- Gembong Kuantan- Lynas and Radioactive Waste Disposal.
- Bukit Koman –issue of cyanide poisoning
- Pengiran, Johor –Petrol Chemical Complex and burning of fossils fuels.
- Ulu Muda Forests- Logging and Deforestation

- Trantum Forest Reserve, Pahang – Problem of Gazetted forest reserves to stay forested.
- Bukit Kiara-preventing further development at the fringes of the green lung.
- Pondok Tanjung Forest Reserve: On brink of Destruction. From 10,170 hectares gazetted in 1913, shrunk to 4446 hectares

## MALAYSIAN ENVIRONMENTAL LAWS

- **Basically there is no lack of Environmental Laws in Malaysia.**
- **Green Issues: Deforestation, Illegal Logging, Biodiversity and Illegal Wildlife Trade.**
- **Blue Issues: Ocean Destruction, Illegal Fishing, Marine Pollution, Freshwater Pollution and Flooding.**
- **Brown Issues: Urbanization, Land and Air Pollution.**

1. INTERNATIONAL TRADE IN ENDANGERED SPECIES ACT 2008
2. ATOMIC ENERGY LICENSING ACT 1984
3. WATERS ACT 1920
4. DRAINAGE WORKS ACT 1954
5. SEWERAGE SERVICES ACT 1993
6. FISHERIES ACT 1985
7. WILD CONSERVATION ACT 2010
8. IRRIGATION AREAS ACT 1953
9. NATIONAL PARKS ACT 1980
10. PEARL OYSTER SHELL FISHERY ORDINANCE (SABAH ORDINANCE)
11. NATIONAL FORESTRY ACT 1984
12. LAND CONSERVATION ACT 1960
13. PARKS ENACTMENT 1984
14. LOCAL GOVERNMENT ACT 1969
15. PLANT QUARANTINE ACT 1976
16. PESTICIDES ACT 1974
17. SABAH BIODIVERSITY ENACTMENT 2000
18. SARAWAK BIODIVERSITY CENTRE ORDINANCE, 1997
19. SABAH ENVIRONMENT PROTECTION ENACTMENT 2002
20. SABAH FOREST ENACTMENT ACT 1968

21. SABAH ANIMAL ORDINANCE 1962
22. SABAH DRAINAGE AND IRRIGATION ORDINANCE 1956
23. SABAH WILDLIFE CONSERVATION ENACTMENT 1997
24. SABAH MINING ORDINANCE 1960
25. SOLID WASTE AND PUBLIC CLEANSING MANAGEMENT ACT 2007
26. STREET, DRAINAGE AND BUILDING ACT 1974
27. BIOSAFETY ACT 2007
28. ENVIRONMENTAL QUALITY ACT 1974
29. ANIMAL ACT 1953
30. EXCLUSIVE ECONOMIC ZONE ACT, 1984
31. NATURAL RESOURCES AND ENVIRONMENT ORDINANCE
32. SARAWAK RIVER ORDINANCE, 1993
33. FISHERIES (ADOPTION) ORDINANCE, 1994 (REPEALED BY STATE FISHERIES ORDINANCE, 2003 (CAP.54))
34. WATER ORDINANCE, 1994
35. FOREST ORDINANCE, 1958 (Chapter 126)
36. LOCAL AUTHORITIES ORDINANCE, 1996
37. NATIONAL PARKS AND NATURE RESERVES ORDINANCE, 1998
38. VETERINARY PUBLIC HEALTH ORDINANCE, 1999

**PERATURAN- PERATURAN YANG  
TERTAKLUK DI BAWAH BIDANG KUASA  
MAHKAMAH ALAM SEKITAR**

- 1 ENVIRONMENTAL QUALITY (PRESCRIBED PREMISES)(CRUDE PALM OIL) REGULATIONS 1977
- 2 ENVIRONMENTAL QUALITY (CLEAN AIR) REGULATION 1978
- 3 ENVIRONMENTAL QUALITY (PRESCRIBED PREMISES)(RAW NATURAL RUBBER) REGULATIONS1978
- 4 ENVIRONMENTAL QUALITY (MOTOR VEHICLE NOISE) REGULATIONS 1987
- 5 ENVIRONMENTAL QUALITY (CONTROL OF EMISSION FROM DIESEL ENGINES) REGULATIONS1996
- 6 ENVIRONMENTAL QUALITY (REFRIGERANT MANAGEMENT) REGULATIONS 1999
- 7 ENVIRONMENTAL QUALITY (HALON MANAGEMENT) REGULATIONS 2000
- 8 ENVIRONMENTAL QUALITY (CONTROL OF EMISSION FROM PETROL ENGINES) REGULATIONS 1996
- 9 ENVIRONMENTAL QUALITY (DIOXIN AND FURAN) REGULATIONS 2004



10. ENVIRONMENTAL QUALITY (CONTROL OF LEAD CONCENTRATION IN MOTOR GASOLINE) REGULATIONS 1985
11. ENVIRONMENTAL QUALITY (SEWAGE AND INDUSTRIAL EFFLUENTS) REGULATIONS 1979
12. ENVIRONMENTAL QUALITY (CONTROL OF EMISSION FROM MOTORCYCLES) REGULATIONS 2003
13. ENVIRONMENTAL QUALITY (CONTROL OF PETROL AND DIESEL PROPERTIES) REGULATIONS 2007
14. ENVIRONMENTAL QUALITY (CONTROL OF POLLUTION FROM SOLID WASTE TRANSFER STATION AND LANDFILL) REGULATIONS 2009
15. ENVIRONMENTAL QUALITY (INDUSTRIAL EFFLUENT) REGULATIONS 2009
16. ENVIRONMENTAL QUALITY (SEWAGE) REGULATIONS 2009
17. ENVIRONMENTAL QUALITY (SCHEDULED WASTES) REGULATIONS 2005

Source: Practice Direction No. 3 2012

# The Gap: A Question Of Whether The Glass Is Half Full or Empty

- Augmentation as against fragmentation :  
for example there are specific legislations for the management of forest such as the National Forestry Act 1984 and the Environmental Quality Act 1974. Added to this we have complementing statutes such as the National Land Conservation Act 1972 and National Parks Act 1980

# Things Have Improved In Terms Of Enforcement.

- Between a fine of RM7000 for killing a tiger and 5 years jail for theft of 11 cans of 'Tiger Beer and 'Guinness Stout' worth RM70. Compare this with the lizard king case.
- Whooping fine of RM500,000 from the previous threshold of Rm100,000 under the Environmental Quality Amendment Act 2012.
- Order 40 of the Rules of Court provides power to the Court to inquire and report upon question of fact or opinion not involving questions of law or of construction.

# So What Gap?

- However From a Climate Change Perspective, there is one.
- Are our laws sufficient to handle a Planetary Emergency?
- Ladies and Gentlemen: We are in the middle of one.

# Climate Change: Mother Of All Environmental Problems.

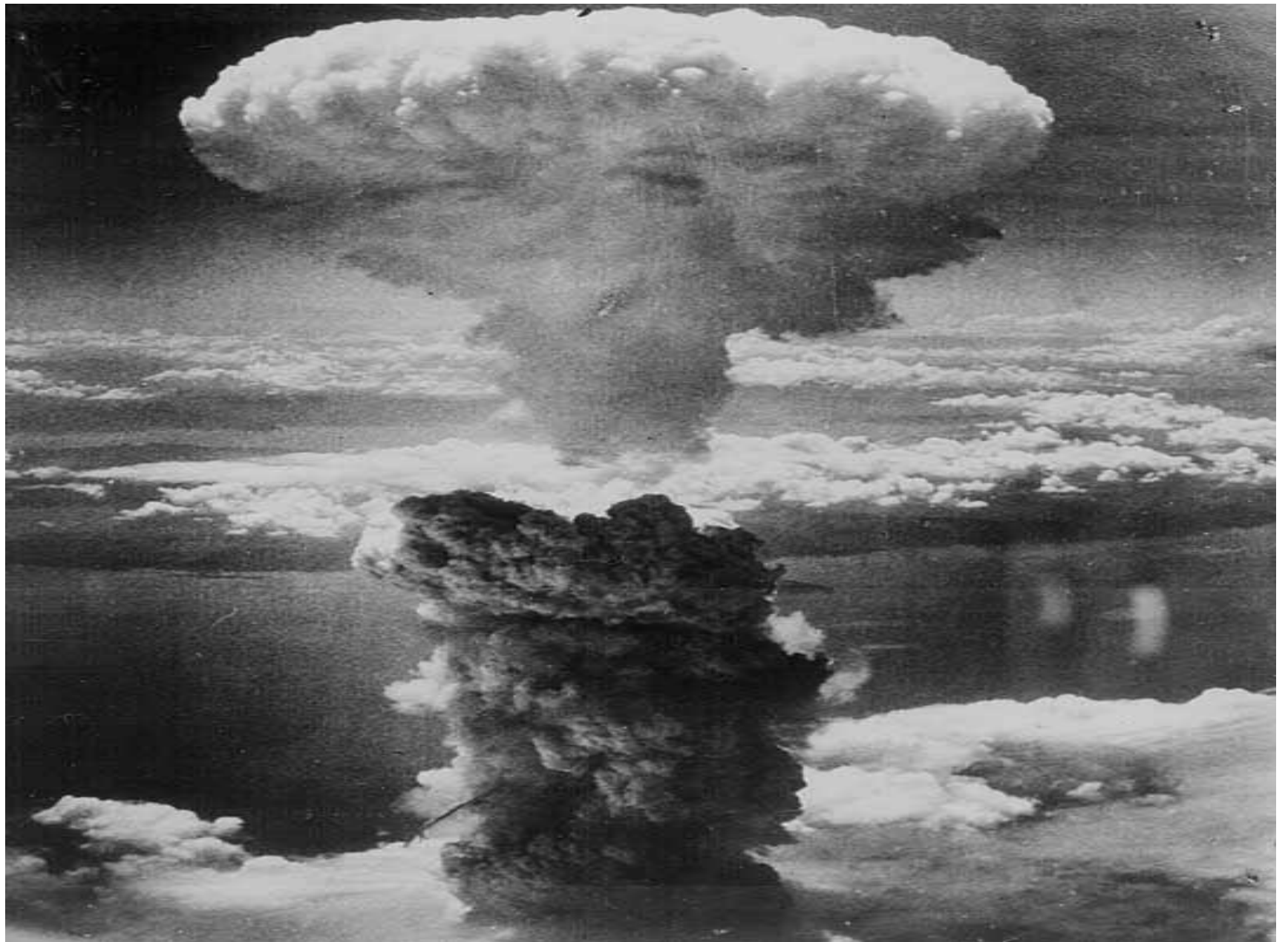
- Environmental Terrorism these days has been inadvertently euphemized as Climate Change . We blame it on CO2. We need to put it in more respectable language.
- There is no escape hatch if we touch the runaway greenhouse effect.
- The real risk of turning Planet Earth (14 degree Celcius) into some sort of Venus (462 degree Celcius) if we continue business as usual.

# The Biggest Human Rights Violations Of All Times Is Already In The Making

- The overall human misery Climate Change is going to bring, greatly exceeds any other series human rights violations so far.
- We have laws for murder and what not. What about those people who wantonly put the lives of billions at risk?

# RUN FOR YOUR LIFE

- Assume the amount of carbon dioxide in the air is instantly doubled. How much will global temperature rise?
- Humans are burning fossil fuels so rapidly that a doubling of CO<sub>2</sub> could be expected in less than a century.
- The renowned authority on Climate Change, Dr James Hansen puts an increase of half degree Celcius as equivalent to 0.6 watts per square metre, a form of energy imbalance. 400,000 Hiroshima atomic bombs per day.





# Run For Your Life

Some of Climate Change deadliest imaginable manifestations :

- a steady but significant rise in average global temperature would wreak havoc to food production, unequal and extreme precipitation leading to rise in sea-level, the drowning of island states and coastal areas, potentialities of war over freshwater supplies, migration and death of species in land and oceans, if we continue business as usual.
- By the time it happens the effects could be *irreversible*. The worst human rights violation of all times, would have already happened.

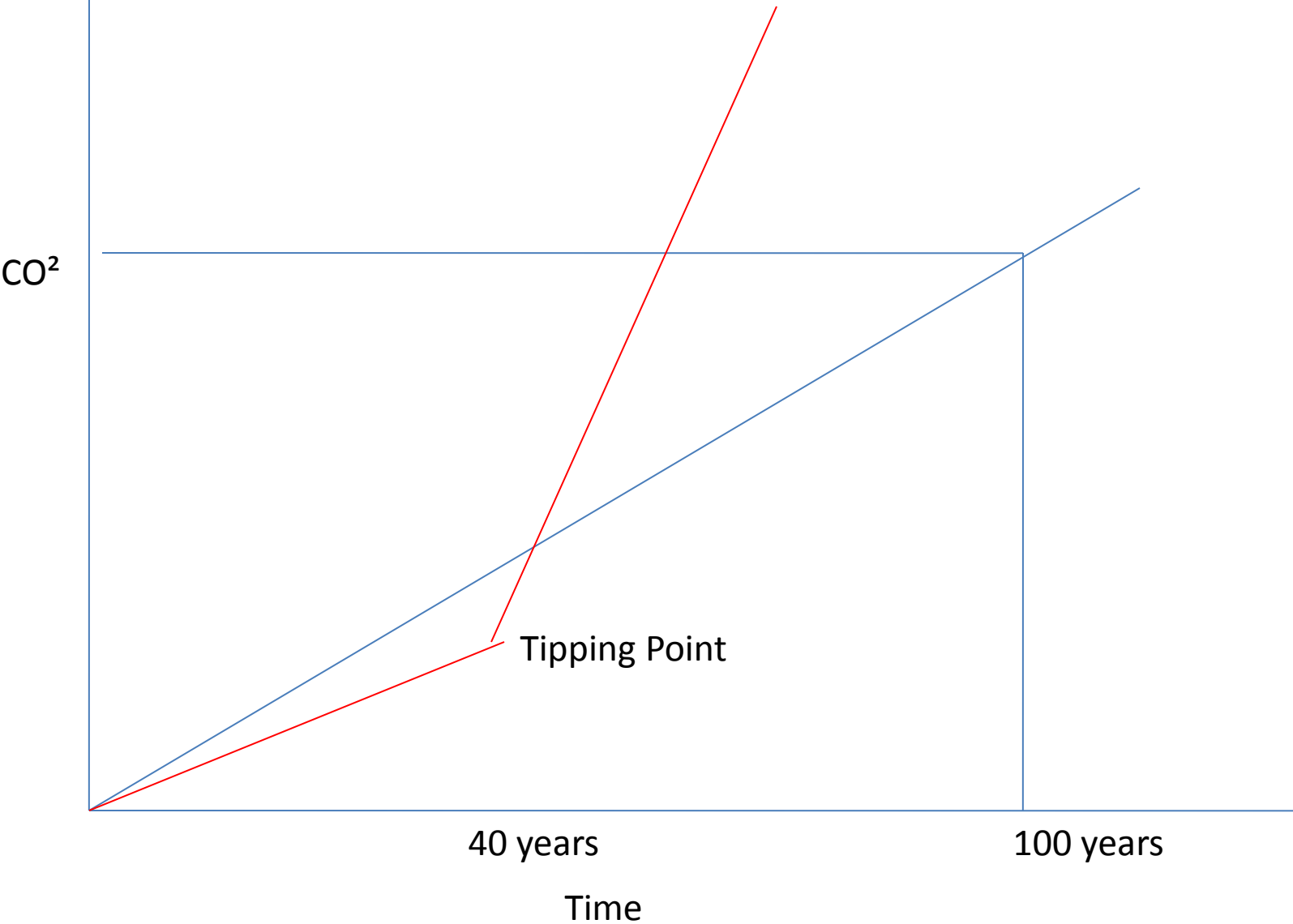
# THE OFFICIAL EVIDENCE

- The Intergovernmental Panel On Climate Change (IPCC) Fourth Assessment Report declared unequivocally that most of the observed increase in globally averaged temperatures since mid-20<sup>th</sup> century is very likely due to the increase in anthropogenic greenhouse gas concentrations. This is an advance since the (3<sup>rd</sup> Assessment Report's) conclusion that 'most of the observed warming over the last 50 years is likely to have been due to the increase in greenhouse gas concentrations'
- A scientific consensus : that the *key source* of global warming is anthropogenic emissions of greenhouse gases (Co2).

# Historically The Common Law of Torts Did Not Envisage Climate Change Liability

- Problem is emission of CO<sub>2</sub> merge with its neighbours and the rest of the world, so global in nature as it respects no national or international boundaries. Extremely heavy burden of proof when compared to ordinary public nuisance cases.
- The mechanism under the traditional common law structure is essentially growth-centric, it has a clear bias against climate change liability.
- It lacks a legal precautionary approach to deal with uncertainty.

IRREVERSIBLE GLOBAL WARMING POLLUTION: PLANETARY EMERGENCY



# A Tale Of Two Planets

It was the best of times, it was the  
worst of times.

# Do We Have Malaysian-Specific Climate Change Cases. No?

Ponder: The Historic Floods in Johor a couple of years back.

Ponder : The Tsunami that occurred in coastal areas of Penang some years back.

Ponder: The frequency and intensity of thunderstorms and floods these days.

Ponder: The heat these days with that in the 1960s.

# Pledge To Reduce Carbon Emission

- Malaysian Prime Minister pledged at Copenhagen Summit to reduce carbon emission by 40% compared to its 2005 level.
- Should we have NKRA's on this? Go for a Paradigm-Shift? Should we pride ourselves in new found oil and gas reserves?

# Its Time For A Climate Change Act.

Incorporating A Low Carbon Path That Is Forward Looking:

- A Carbon Tax
- A Renewable Energy Research Cum Trust Fund
- A Cap on Carbon Emission on the Fossil Burning Industries.
- Introducing Climate-Change Litigation with special emphasis on Courts discretion based on the precautionary principle.



# Why Should We Be Doing These Things?

Is it heroic if we do?

Or immoral if we don't?

Or is it amoral if we don't?

Thank You